

**Letter of Findings: 01-20160180
Indiana Individual Income Tax
For The Tax Year 2012**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individuals were not required to file a 2012 joint Indiana individual income tax return because they were not Indiana residents.

ISSUE

I. Indiana Individual Income Tax - Residency - Domicile.

Authority: IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Ind. Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Ind. Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Ind. Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Ind. Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014); Croop v. Walton, 157 N.E. 275 (Ind. 1927); State Election Bd. v. Bayh, 521 N.E.2d 1313 (Ind. 1988); In the Matter of Evrard, 333 N.E.2d 765 (Ind. 1975); [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#).

Taxpayers protest the Department's proposed assessment for the 2012 tax year.

STATEMENT OF FACTS

Taxpayers are a married couple residing in Florida since 2005. They also own real property in Indiana. The Indiana Department of Revenue ("Department") determined that Taxpayers were Indiana residents for the tax year 2012, and that Taxpayers failed to file their 2012 joint Indiana income tax return. The Department, therefore, issued a proposed assessment for 2012 for income tax, penalty, and interest.

Taxpayers timely protested the proposed assessment. An administrative hearing was held. This Letter of Findings ensues and addresses Taxpayers' protest of the proposed assessment for the tax year 2012. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency - Domicile.

DISCUSSION

The Department assessed Taxpayers income tax for the 2012 tax year on the grounds that Taxpayers were Indiana residents and that they failed to file their 2012 joint Indiana income tax return. Specifically, the Department determined that Taxpayers were residents based on the filing of a homestead exemption on their Indiana real property. Taxpayers contend that they were not required to file a 2012 Indiana income tax return because they were not Indiana residents in 2012, and that they took steps to remove the Indiana homestead exemption from their Indiana property. The issue is whether, for the tax year 2012, Taxpayers were Indiana residents and were therefore subject to Indiana income tax.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Ind. Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Ind. Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting his challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Ind. Dep't of Local Gov't Fin., 939

N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Ind. Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). For income tax purposes, "The term 'resident' includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state . . ." IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). A nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

To establish a domicile, a taxpayer "must be physically present at a place, and must have the simultaneous intent of establishing a home at that place." [45 IAC 3.1-1-22](#). For income tax purposes, "a person has only one domicile at a given time even though that person maintains more than one residence at that time." *Id.* Additionally, "[o]nce a domicile has been established, it remains until the conditions necessary for a change of domicile occur." *Id.* "To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely." *Croop v. Walton*, 157 N.E. 275, 278 (Ind. 1927).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the standard by which "domicile"—and thus residency—is established. The court determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. Specifically, the court explained, in relevant part:

Once acquired, domicile is presumed to continue because every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place. Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile. A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence.

Id. at 1317 (internal quotations and citations omitted). The Indiana Supreme Court went on to conclude that:

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile.

Id. at 1318 (Internal citations omitted); see also *In the Matter of Evrard*, 333 N.E.2d 765, 768 (Ind. 1975) ("The person must show . . . evidence of acts undertaken in furtherance of the requisite intent, which make that intent manifest and believable.")

Additionally, [45 IAC 3.1-1-22](#) considers the following relevant facts in determining whether a new domicile has been established:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return **or complying with the homestead laws of a state**
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

(Emphasis added).

These factors are not exclusive in determining an individual's intent to relocate. "The determination of a person's intent in relocating is necessarily a subjective one. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual

case." Id.

During the protest process, Taxpayers submitted additional documentation to support their assertion that they were not Indiana residents and did not owe any Indiana income tax for the tax year 2012. The documents included Taxpayers':

- Florida declaration of domicile, dated December 29, 2004;
- Florida homestead exemption renewal receipts for 2013 and 2016;
- Property tax records for tax years 2008, 2011, 2012 and 2015 reflecting a Florida homestead exemption;
- Florida driver's licenses issued in 2010 and 2011;
- Florida voter registrations dated December 2004 and January 2005;
- Membership in yacht club in Florida showing membership since 2012;
- Bank statement showing Florida address;
- County assessment records of Florida residence;
- Vacation schedule showing number of days spent in Florida, Kentucky and Indiana.

With respect to the homestead exemption on the couple's Indiana property, Taxpayers provided a copy of a letter addressed to the County Auditor dated January 1, 2005, requesting that the homestead exemption be removed from their Indiana property effective December 31, 2004, as well as a letter from the County Auditor confirming receipt of the authorization for removal of the exemption. In 2010, Taxpayers received a form requesting information needed to verify the validity of Taxpayers' Indiana homestead exemption, which had already been removed. Taxpayers completed the form and listed their Florida address and driver's license information, and returned it to the County Auditor's office. Despite the fact that Taxpayers had not listed an Indiana address or driver's license information, the County Auditor's office re-established the homestead exemption on Taxpayers' Indiana property effective for 2011. Taxpayers sent another letter to the County Auditor's office on November 2, 2015, again requesting that the homestead exemption be removed from their Indiana property effective tax year 2011, the year the homestead exemption was re-established. The County Auditor's office sent a letter to Taxpayers confirming the removal of the homestead exemption for tax year 2015, but declined to re-assess the property taxes for the previous years.

In this case, Taxpayer has provided credible documentation sufficient to establish their intent to abandon their Indiana domicile prior to 2012. Consideration of the factors outlined in [45 IAC 3.1-1-22](#) and the documentation provided by Taxpayers support a finding that Taxpayers abandoned their Indiana domicile in 2005 with the intent of making Florida their new domicile; Taxpayers filed a Florida declaration of domicile at the end of 2004, registered to vote in Florida, obtained Florida driver's licenses, maintained Florida social club memberships, and did not spend more than 183 days in Indiana. Taxpayers have shown that they made diligent attempts to remove the homestead exemption from their Indiana property, and it appears that the re-establishment of the homestead exemption in 2011 was an error on the part of the County Auditor's office. Therefore, Taxpayers proved the proposed assessment to be incorrect as required by IC § 6-8.1-5-1(c), and they are not subject to Indiana income tax for the tax year 2012 because they were nonresidents.

Residency cases are particularly fact sensitive, thus the position relayed within this document pertains only to this case and its specific set of facts.

FINDING

Taxpayers' protest is sustained.

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